UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

Criminal No. 1:05-cr-10074-PBS

CHARLES CARRINGTON

MEMORANDUM IN SUPPORT OF MOTION TO SUPPRESS **IDENTIFICATION**

Charles Carrington submits the following Memorandum in Support of the Defendant's Motion to Suppress Identification Evidence.

An in-court identification of a defendant is excludable if tainted by a preaccusatorial identification procedure that was so "impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification." United States v. Carbaial, 956 F.2d 924 (9th Cir. 1992) (citations omitted). The touchstone to the admissibility of an in-court identification is "reliability" of the witness' identification.

The factors to be considered...include the opportunity of the witness to view the criminal at the time of the crime, the witness' degree of attention, the accuracy of his prior description of the criminal, the level of certainty demonstrated at the confrontation, and the time between the crime and the confrontation. Against these factors is to be weighed the corrupting effect of the suggestive identification itself.

Manson v. Brathwaite, 97 S.Ct. 2243, 2253 (1977), citing Neil v. Biggers, 409 U.S. 188, 93 S.Ct. 375 at 382 (1972).

In this case, it is clear that the procedure used in Felizberta Monteiro's identification of Charles Carrington was impermissibly suggestive. Ms. Monteiro was driven by the police to the corner of Lochstead Street and Centre Street in Jamaica Plain, where the police had stopped Carrington and placed him in custody. According to police

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reports, Carrington was uncuffed, given his black jacket and knit cap to put on, and stood alone as officers stepped away from him. It is unclear from the reports how far away the police were from him, how many police were there, and if the truck in which he had been a passenger was visible to the witness. Upon being shown Carrington, Monteiro made a positive identification. (See Police Report attached as Exhibit A). The identification is similar to the "one photograph" identification in *Mason*. In that case the parties conceded that the procedure was suggestive and there were no emergencies or exigencies that created a necessity for the procedure use. *Mason*, 97 S.Ct. at 2250.

This initial identification "taints" any subsequent identifications made by Ms.

Monteiro. See United States v. Foppe, 993 F.2d 1444, 1450 (9th Cir. 1993). In Foppe,
the Ninth Circuit held that an in-court identification subsequent to a Fourth Amendment
violation must be suppressed if any one of the following elements were derived from the
violation: "(1) the witness' presence at trial; (2) the ability of the witness to identify the
defendant as the perpetrator of the crime; and (3) the presence of the defendant in the
courtroom. (citations omitted)." Id. Here, the pre-accusatorial identification procedure
was unnecessarily suggestive. The determination remains as to whether the identification
is reliable under the factors in Mason. This determination can only be made after an
evidentiary hearing.

CHARLES CARRINGTON By his attorney,

/s/ Mark W. Shea
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